IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.1202 OF 2005
IN
SUIT NO.1228 OF 1985

Smt.Rasilaben Kantilal Kansara ..Plaintiff.

V/s.

Sumitra Amratlal Kocha & Ors. ..Defendants.

And

Madhusudan B. Kocha ..Applicant.

And

Court Receiver ..Respondent.

Mr.Pratik Sakseria with Ms.Saumya Shrikrishna i/b Raval Shah & Co. for appdlicant.

Mr. Mihir Mody i/b. M/s.K.Ashar & Co. for defendant No.1(a) to 1(e).

Mr.Ashish Kamat with Amar Khanna i/b M/s.Vijaykumar & co. for defendant No.2 and 3.

Mr.A.S.Doctor i/b B.Munim & co. for plaintiff.

CORAM: A.M.KHANWILKAR,J

DATE : OCTOBER 19, 2005.

P.C. :

1. Heard counsel for the parties. Perused the pleadings.

2. This chamber summons is for direction to the respondent court receiver to forthwith execute a Deed of Conveyance in respect of flat No.B-24, Sea-Gull

Apartment, 4A, Bhulabhai Desai Road, Mumbai 400 026, alongwith all rights and/or benefits attached thereto and/or incidental including open car parking space in the basement of the said building allotted by Sea-Gull Co-operative Housing Society Limited. It is not in dispute that the applicant has purchased the said flat in court auction and has deposited entire sale consideration.

3. This chamber summons is however, opposed by defendant No.2 and 3. According to the defendant No.2 and 3, open car parking space is independent and the same cannot be allotted to the applicant, merely because the applicant has purchased the flat in question in court auction. This argument is canvassed relying on the terms and conditions of sale on which the said flat was purchased which makes no reference to open car parking space. Reliance is also placed on the clause 9 thereof which provides that purchaser shall purchase the said Flat in the same condition on "As is where is" and "As is what is" basis. Reliance is also placed on the award passed by the Arbitrator in particular paragraph 38 thereof, which clearly makes reference to the fact that the court receiver shall sell the said flat as vacant flat which again makes no reference to the

open car parking space. Learned counsel for the defendant No.2 and 3 has also placed reliance on the decision of this court in AIR 1983 Bombay 68 in **Morarji Gokuldas Deoji Trust & Ors. v/s. Madhav Vithal Kudwa** to contend that open car parking space is not part of premises.

4. Having considered rival submissions, I have no difficulty in accepting the stand taken on behalf of the applicant. Applicant has given highest bid in court auction and has deposited sale consideration. Indeed, terms of sale would refer only to flat No.B-24 in Sea-Gull Apartment. That does not mean that open car parking space will not form part thereof, rights in respect of which are incidental to the occupation of flat No.B-24 in Sea-Gull Apartment. Counsel for the applicant has rightly relied on the communication letter issued by the Cooperative Housing Society dated 2nd June, 2005, which clearly spells out that the occupant of flat No.B-24 of the society will be entitled to enjoy the open car parking space in the underground as is allotted to Smt. S.A.Kochar. Counsel for the applicant has also invited my attention to the receipt issued by the Cooperative Housing Society which refers to the maintenance amount, and Municipal taxes in respect of

flat and garage portion. Although premises is described as garage, it is under ground open car parking space in the basement area of the building. The society has allotted shares in favour of the defendant No.1(A), on which basis, flat No.B-24 in Sea-Gull Apartment has been allotted to the said member. Alongwith the said flat all incidental rights conferred on account of the said allotment which includes car parking space can be availed by the member and, naturally, the person who purchases the said rights in the court sale. Reliance placed on the decision of this court in **Morarji Gokuldas's** case is inapposite. That is the case between the land lord and tenants. Observations made therein will be of no avail. Learned counsel for the defendant No.2 and 3 was unable to produce any allotment letter indicating that allotment of open parking space is independent of the Flat No.B-24 in Sea-Gull Apartment. Reliance placed on the contents of the award or for that matter, terms of sale, will be of no avail.

5. It is seen that valuation report prepared by the valuer appointed by court receiver also refers to the fact that the said flat is having facility of car parking(Approximately 150 sq.ft.). As mentioned

earlier, alongwith flat in question the said car parking space was allotted to defendant No.1(a) on the basis of shares issued by the society. All rights which are enjoyed by other flat owners of the society as were originally enjoyed by the Defendant(member herself) can be enjoyed by the Applicant/purchaser. Viewed in this perspective, I have no hesitation in making this Chamber Summons absolute in terms of prayer clause (a). Ordered accordingly.